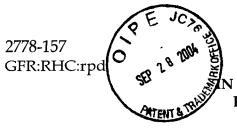
# TTAE



# I THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of Serial No. 78/136,703

Filed:

June 18, 2002

Mark:

BARILLA - AMERICA'S FAVORITE PASTA

AMERICAN ITALIAN PASTA CO.	)
Opposer,	) )
v.	) Opposition No.: 91161373
BARILLA G. E R. FRATELLI - SOCIETÀ PER AZIONI	) ) )
Applicant.	) ) )

## **ANSWER TO NOTICE OF OPPOSITION**

Barilla G. E R. Fratelli - Società Per Azioni (hereinafter "Barilla") answers the Notice of Opposition in accordance with the paragraphs of allegation therein.

- 1. Insufficient information.<sup>1</sup>
- 2. Barilla has changed its name to Barilla G. E R. Fratelli Società Per Azioni, with an address at Viale Riccardo e Pietro Barilla 3/A Parma, Italy; otherwise, admitted.
- 3. Insufficient information.
- 4. Insufficient information except admitted that Application Serial Nos.

76/497,489 and 76/497,190 recite the goods as "pasta" and an alleged date of use prior to the filing date of the opposed application.

- 5. Insufficient information.
- 6. Insufficient information.

09-28-2004

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<sup>&</sup>lt;sup>1</sup>Insufficient information as pleaded herein is shorthand for pleading that applicant is without sufficient knowledge or information with which to form a belief and leaves opposer to its proofs.

- 7. Admitted to the extent that Barilla filed on June 18, 2002 an application under intent-to-use for the mark BARILLA AMERICA'S FAVORITE PASTA for "pasta, pasta products, sauces for pasta," in Class 30 and said application was assigned Ser. No. 78/136,703; otherwise denied.
  - 8. Admitted.
- 9. Admitted to the extent that the file history of the recited application 76/497,489 indicates that the Examining Attorney has cited the opposed application; otherwise, denied.
- 10. Admitted to the extent that Barilla is the owner by virtue of assignment of U.S. Registration No. 2,005,752; otherwise, denied.
  - 11. Denied.
  - 12. Insufficient information.
  - 13. Denied.
  - 14. Denied.
  - 15. Denied.
  - 16. The allegation is a prayer for relief and requires no response.

#### **AFFIRMATIVE DEFENSES**

#### First Affirmative Defense

Opposer has conceded that AMERICA'S FAVORITE PASTA is not inherently distinctive in connection with its pasta products.

#### **Second Affirmative Defense**

Opposer's alleged AMERICA'S FAVORITE PASTA mark lacks acquired distinctiveness, and the opposition thereby fails to state a claim upon which relief can be granted.

#### **Third Affirmative Defense**

The opposition is barred by the equitable doctrines of laches and/or estoppel.

### **Fourth Affirmative Defense**

The alleged trademark AMERICA'S FAVORITE PASTA is misdescriptive of Opposer's goods, which lack the requisite market share to support such claim.

WHEREFORE, Barilla prays that the opposition be dismissed with prejudice.

Respectfully submitted,

By Robert H Cameron G. Franklin Rothwell Robert H. Cameron Attorneys for Applicant

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# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing ANSWER was served on September

2004, by first-class mail, postage prepaid, on counsel for Opposer:

Thomas H. Van Hoozer, Esq. Hovey Williams LLP 2405 Grand Blvd., Suite 400 Kansas City, MO 64108

Robert DiGiovanni

answer